

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:	:	MULTI-DISTRICT LITIGATION
ASBESTOS PRODUCTS	:	
LIABILITY LITIGATION	:	NO. MDL 875

NATHANIEL CUMMINGS, ET AL.	:	CIVIL ACTION
v.	:	
	:	
BNSF RAILWAY COMPANY	:	NO.: 07-cv-00110
	:	(U.S.D.C. Illinois Southern)

NATHANIEL CUMMINGS, ET AL.	:	CIVIL ACTION
v.	:	
	:	
BNSF RAILWAY COMPANY	:	NO.: 08-cv-89539
	:	(U.S.D.C. Pennsylvania Eastern)

MEMORANDUM AND ORDER

A civil action was filed in the United States District Court for the Southern District of Illinois and properly docketed by that court as 07-cv-00110; this civil action has been transferred to this court as part of the federal systemwide asbestos products liability litigation, known commonly as MDL 875.

This one civil action has been brought by 4 individual plaintiffs.¹ We note that claims of different plaintiffs which involve common legal issues, but totally different alleged facts, may not be grouped into a single action pursuant to the plain and unambiguous language of Federal Rule of Civil Procedure 20(a)(1). In the instant matter, while it is true that the claims asserted by each of the plaintiffs against the defendants in this civil action are based upon alleged injuries allegedly

¹For the purpose of this Memorandum and Order, the term “plaintiff” shall also include and refer to that plaintiff’s spouse, if a party, or the estate’s administrator, if a party.

incurred as a result of exposure to asbestos products, their individual claims do not arise out of the same transaction, occurrence, or series of transactions or occurrences, and are therefore not related within the meaning of Federal Rule of Civil Procedure 20(a)(1).² Pursuant to Federal Rule of Civil Procedure 21, federal courts may sever misjoined plaintiffs *sua sponte* when their claims do not arise out of the same transaction, occurrence, or series of transactions or occurrences.³ In addition, courts may sever parties for the “efficient administration of justice.”⁴ An action severed under Federal Rule of Civil Procedure 21 becomes an independent civil action.⁵

Moreover, the just, speedy and efficient processing of this matter in this court will require separate trials for each of these plaintiffs, as their lawsuits may involve different facts, different witnesses, different evidence, different legal theories and different defenses, which could lead to confusion of the jury if they were all tried together.⁶ In addition, it is obvious that permitting such multi-plaintiff actions with unrelated claims to proceed without severance would complicate discovery and interfere with its completion in accordance with assigned deadlines.

²In re: Avandia Marketing, Sales Practices and Products Liability Litigation, MDL No. 1871 (ED Pa. July 21, 2008); DirectTV v. Citrigno, 03-cv-3282 (ED Pa. October 27, 2003); DirectTV v. Weiss, 03-cv-3277 (ED Pa. August 5, 2003); Norwood Co. V. RLI Ins. Co., et al., 01-cv-6153 (ED Pa. Apr. 4, 2002); Myers v. Consolidated Rail Corporation, 96-cv-6579 (ED Pa. October 17, 1996). Accord, In Re: Diet Drugs, MDL 1203, 325 F.Supp. 2d 540 (ED Pa. 2004).

³Norwood Co. V. RLI Ins. Co., et al., 01-cv-6153 (ED Pa. Apr. 4, 2002).

⁴Official Comm. Of Unsecured Creditors v. Shapiro, et al., 190 F.R.D. 352, 355 (E.D. Pa. 2000).

⁵See, Degen v. Bunce, et al., 93-cv-5674 (ED Pa. Mar. 13, 1995).

⁶See, United States v. 1,071.08 Acres of Land, Yuma and Mojave Counties, Arizona, 564 F.2d 1350 (9th Cir. 1977); Manufacturers Bank and Trust Company of St. Louis v. Transamerica Insurance Company, 568 F.Supp. 790 (ED Mo. 1983); Henz v. Superior Trucking Company, Inc., 96 F.R.D. 219 (MD Pa. 1982).

BY THE COURT:



JAMES T. GILES, J.

Date: 10/2/08